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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF APPEALS

APPLICANT: WHITE, James M.

SERIAL NO.: 09/596,370 ART UNIT: 1744

FILED: June 19, 2000 EXAMINER: Chorbaji, M. R.

TITLE: BIOLOGICAL FLUID DISPOSAL SYSTEM

APPLICANT'S BRIEF IN SUPPORT OF APPEAL

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is an appeal from the Final Rejection of Claims 21-35.

The appeal brief is being re-submitted in response to the Notice of Non-Compliant Appeal Brief of April 19, 2006, having a response being due by May 19, 2006. A copy of which is attached hereto.

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EXAMINER	
ART UNIT	PAPER NUMBER

DATE MAILED: 04/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliant Appeal Brief (37 CFR 41.37)	Application No. 09/596,370	Applicant(s) WHITE, JAMES M.	
	Examiner MONZER R. CHORBAJI	Art Unit 1744	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on *02/03/2006* is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file anamended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.

2. ☐ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).

3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).

4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).

5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi))

6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).

7. ☐ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).

8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).

9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).

10. ☐ Other (including any explanation in support of the above items):

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RANDALL E. CHIN
PRIMARY EXAMINER

TABLE OF CONTENTS

REAL PARTY IN INTEREST

Medwaste Holdings, L. C. is the real party in interest in the present appeal. The person named in the caption, James M. White, assigned rights to the application on June 13, 2000 by a document recorded in the U.S. Patent and Trademark Office at Reel 010911 and Frame 0537. Mr. White's company, Southern Medwaste, Inc., is a licensee under Medwaste Holdings, L.C. of certain rights in the present application.

RELATED APPEALS AND INTERFERENCES

There are no other related appeals or interferences known to Applicant which will directly affect or be directly affected by or have a bearing on the Board's decision in the present appeal.

STATUS OF CLAIMS

Originally, Claims 1 - 20 were filed in this case, having independent Claims 1, 12 and 17.

After the First Office Action, Applicant canceled all of the original claims, Claims 1-20, and substituted Claims 21 -35. The new independent Claims 21, 29 and 33 corresponded to the original independent claims while incorporating intervening dependent claims.

After a Final Action and Request for Continued Examination, Applicant amended all three independent claims, Claims 21, 29, and 33. Claim 21 incorporated the limitations of original Claim 1 and Claim 11. Claim 29 incorporated the limitations of original Claim 12 and Claim 16. Claim 33 incorporated the limitations of original Claim 17 and Claim 20. Additional clarifying changes were made in dependent Claims 24 and 25. Claims 21-35 remained pending.

After the Third Office Action, Applicant made additional amendments to the independent claims, Claims 21, 29, and 33. Claim 27 was amended so as to include corresponding changes in

the independent claims. Claims 21-35 all remained pending.

After another Final Action rejecting all Claims 21-35, the present appeal was filed. Claims 1-20 were canceled in a previous amendment. Claims 21-35 are the pending claims at issue in the present appeal.

STATUS OF AMENDMENTS

Applicant attempted to conduct an Examiner's Interview to reduce the issues on appeal, but the Examiner denied the Interview Request. As such, no amendments have been filed subsequent to the Final Rejection of August 29, 2005.

SUMMARY OF CLAIMED SUBJECT MATTER

The present invention provides a convenient and easy biological fluid sanitizing unit to install in the hospital environment whereby a disinfectant can be mixed with blood prior to passing the biological fluid to the sewer. It was important to provide a system whereby no pumps or valves were required in order to create the proper mixture of disinfectant and blood. Additionally, in the system of the present invention, it is also important to create a system whereby, when the biological fluid and the biological fluid container was exhausted, no more disinfectant would be drawn into the system. The present invention utilizes a unique system of venturi effect, along with orifice relationships, so as to properly mix the components together. This structure is neither shown nor suggested in the prior art patents.

The first independent claim discloses a biological fluid disposal system comprising: a housing 12; a water flow line 14 having an inlet and an outlet extending outwardly of the housing;

a biological fluid line 16 in fluid communication with the water flow line; and a disinfectant line 18 in fluid communication with the water flow line. These structures are shown in Figures 1 and 2 with the reference numerals as provided herein and are described in the specification on page 7, l.12 to page 11, l. 7. The independent claim states that the biological fluid line having an inlet positioned outwardly of the housing. The disinfectant line is in valveless fluid communication at a connection point with the biological fluid line within the housing. The flow of water through the water flow line causes a suction action through the biological fluid line and the disinfectant line to draw a biological fluid line through the biological fluid line and to draw a disinfectant through the disinfectant line so as to mix the disinfectant with the biological fluid prior to passing into the water flow line. The housing has no pumps therein.

The second independent claim recites a biological fluid disposal system comprising: a water flow line 14; a biological fluid line 16 in fluid communication with the water flow line; a disinfectant line 18 having a valveless connection at a connection point to the biological fluid line; and a venturi means 70 connected to the water flow line for creating a suction force. These structures are also shown in Figures 1 and 2 with the reference numerals as provided herein and are described in the specification on page 7, l.12 to page 11, l. 7. This independent claim recites the venturi means 70 so as to draw a biological fluid through the biological fluid line and to draw a disinfectant through the disinfectant line so as to mix intimately together in the biological fluid line prior to passing as a mixture into the water flow line.

The third independent claim teaches a method of disposing of a biological fluid comprising: connecting a biological fluid line 16 in valveless relation to a disinfectant line 18 at a connection point; connecting a water flow line 14 to an outlet of the other of the biological fluid line and the

disinfectant line; passing water through the water flow line across the outlet so as to cause a venturi effect 70 to solely draw a biological fluid and a disinfectant through the respective biological fluid line and disinfectant line; mixing the biological fluid and the disinfectant; and discharging the water and the mixed biological fluid and disinfectant from the water flow line. The method directly references the structures and reference numerals of the first two independent claims and is described in the specification on page 9, l.9 to page 11, l. 7.

The "means + function" terms in the claims are identified as follows:

Claim	term	specification and drawings
22	inlet means	Figures 1 and 2, reference numeral 28; specification, Page 8, ll. 4-11.
22	outlet means	Figures 1 and 2, reference numeral 22; specification, Page 7, l.18 to Page 8, l.2 and Page 8, l.11 to Page 9, l.5.
23	outlet means	Figures 1 and 2, reference numeral 22; specification, Page 7, l.18 to Page 8, l.2 and Page 8, l.11 to Page 9, l.5.
25	valve means	Figures 1 and 2, reference numeral 54; specification, Page 9, ll.6-8.
29	venturi means	Figures 1 and 2, reference numeral 70; specification, Page 10, ll. 18 to Page 11, l. 7

GROUNDS OF REJECTION
TO BE REVIEWED ON APPEAL

In the Final Office Action of August 29, 2005, Claims 21-25, 29-31 and 33-34 were rejected under 35 U.S.C. §103(a) as being unpatentable over the Jackson patent in view of the Aubrey patent and further in view of the Kern patent. Claims 26-28, 32 and 35 were rejected under 35 U.S.C. §103(a) as being unpatentable over the Jackson patent in view of the Aubrey patent and further in view of the Kern patent and the Griffiths patent.

ARGUMENT

I. OVERVIEW

Applicant respectfully contends that the prior art combinations do not make the present invention obvious. Applicant has not disputed the relatedness of these combined references. It is important to note that Applicant even provided some of these references in an information disclosure statement and in the discussion of the background art in the specification. Applicant simply believes that, even though the prior art patents are related, the prior art combinations used by the Examiner would not have been made by one skilled in the art, and that the combination of the references still does not disclose the invention, making the invention obvious. Furthermore, the Examiner has clearly mis-identified structures in the prior art references and improperly applied non-analogous structures as disclosing structures of the present invention.

A. THE PRESENT INVENTION ADDRESSES CONCERNS COMPLETELY UNRELATED TO THE PURPOSES OF PRIOR ART PATENTS

It is important to re-assert that the purpose of the present invention is to provide a convenient and easy unit to install in the hospital environment whereby a disinfectant can be mixed with blood prior to passing the biological fluid to the sewer. It was important to provide a self-regulated system with minimal mechanical and electrical devices. The present invention utilizes a unique system of venturi effect, along with orifice relationships, so as to properly mix the components together. This structure is neither shown nor suggested in the prior art patents. The unique venturi effect as described and claimed has particular importance with respect to the present invention. As recited on pages 7 and 8 of the original specification:

> The flow of water through the water flow line 14 across the

> outlet 22 creates a venturi effect so as to create a suction within the pipe 20 for drawing the disinfectant 24 through the disinfectant line 18 and for drawing the biological fluid 26 into and through the biological fluid line 16.

As a result of the structure of the present invention, a static, self-regulated system is created, despite being pumpless and generally valveless. The independent claims have been amended to reflect this inventive aspect of the present invention. Specifically, the suction through the disinfectant line is dependent upon the flow of biological fluid. As originally disclosed in Figure 1, it is clear that the suction at outlet 22 draws biological fluid through the biological fluid line. As the biological fluid passes over the valveless connection to the disinfectant line, suction draws disinfectant through the disinfectant line. Thus, the invention clearly shows a related venturi effect, wherein the flow of biological fluid across the valveless connection draws the disinfectant through the disinfectant line for mixing. The flow of the disinfectant, as a second fluid, is dependent upon the flow of the biological fluid, as a first fluid. Additionally, as stated in the original specification on page 10, lines 13 - 17.

> An interesting feature of the present invention is that the system is its self-regulation. In any venturi-type system, fluids will flow in the direction of least resistance. When the supply of biological fluid 26 is exhausted from container 50, the inlet 32 will simply suck air therethrough. As a result, no disinfectant 24 will be drawn, at that time, from the container 58. As such, there is no need to monitor the system to shut off the system when the biological fluid supply is exhausted.

The self-regulating characteristic of the present invention is a result of the flow of the biological fluid coinciding with the flow of the disinfectant. The coordinated flow of the two different fluids is significant because the system is pumpless and valveless at the mixing point. Unlike the prior art, the present invention relies upon this passive-type control to stop the mixture of biological fluid and

the disinfectant.

B. THE PRESENT INVENTION ACHIEVES ADVANTAGES THAT CANNOT BE ATTAINED BY ANY OF THE PRIOR ART PATENTS SEPARATELY OR IN COMBINATION

The present invention is a unique solution of reducing as many internal devices and structures as possible and decreasing the need for monitoring and adjustment, while still maintaining controlled mixture of the two fluids. The present invention greatly reduces mechanical failures and cleaning and maintenance time; however, close attention must be paid to the installation of the system because there are no internal controls to change settings within the housing or at the connection point.

II. THE INVENTION IS NOT MADE OBVIOUS BY THE PRIOR ART COMBINATIONS BECAUSE THE COMBINATIONS FAIL TO TEACH ALL ELEMENTS OF THE INVENTION AS NOW CLAIMED

With respect to the independent Claims 21, 29 and 33, and the corresponding dependent claims, Applicant respectfully contends that the Jackson, Aubrey and Kern combination and the Jackson, Aubrey, Kern and Griffiths combination do not make the present invention obvious because not all elements of the present invention are disclosed as now claimed. Although Applicant disputes the specific combinations of the prior art references, Applicant does acknowledge the general relatedness of these references. It is important to note that Applicant even provided some of these references in an information disclosure statement and in the discussion of the background art in the specification. However, Applicant respectfully contends that the combinations simply do not disclose all of the elements of the invention as claimed.

A. THE PRIOR ART COMBINATION OF THE JACKSON PATENT, AUBREY PATENT AND KERN PATENT DOES NOT DISCLOSE THE ELEMENTS OF THE INVENTION AS CLAIMED

With regard to the obviousness rejection of Claims 21-25, 29-31 and 33-34, Applicant respectfully contends that it is clear that the combination of the Jackson, Aubrey and Kern patents does not teach the limitations of the amended independent claims, Claims 21, 29, and 33.

1. There are Elements Not Disclosed by the Prior Art Combination

The disinfectant line element of the present invention, with corresponding limitations on the disinfectant line element as claimed, is not disclosed by the prior art combination. The Jackson patent teaches an apparatus for the treatment and disposal of infectious waste. The Jackson patent was originally provided by the Applicant as a typical prior art system that is distinguishable from the present invention. The Jackson patent depends upon various pumps and valves within the housing for active control of the mixing and incubation of different liquids and mixtures throughout the system. The Jackson patent provides for heavily controlled and monitored activity, requiring extensive devices and controls.

The Aubrey patent does not teach a pumpless and valveless structure within the housing. The Aubrey patent teaches against such a structure because of needed electronic controls regulating fluids (i.e. solenoid valve 64), at different locations within the housing 66. The Kern patent does not teach that the flow of the disinfectant fluid is dependent on the flow of the biological fluid. The concept of venturi and suction by water flow is disclosed; however, the inter-relationship between two fluids with related venturi effects, as now clarified in the amended Claim 21, are not disclosed by the Kern patent. The multiple fluids of the Kern patent are arranged in parallel to allow fine

adjustment of individual fluid sources. Furthermore, only one venturi-related effect is taught instead of the multiple venturi-related system of the present invention. There is no suggestion of this use of more than one venturi with the structural limitations included in the claim language. As such, all elements of the present invention are not made obvious by the combination of prior art patents.

Relative to independent Claims 29 and 33, Applicant respectfully contends that the combination of the Jackson, Aubrey and Kern patents similarly fail to disclose the structure of the present invention as defined by independent Claim 21. Claims 29 and 33 have been amended to clarify the valveless relation at the connection point within the housing, which is not disclosed by the either the Jackson patent or Aubrey patent. Additionally, the coinciding flow of disinfectant and flow of biological fluid flow is not taught by the Kern patent. In fact, the Kern patent teaches against such an arrangement so as to allow the independent adjustment and manipulation of multiple fluids at multiple fluid inlets.

2. Mis-Application of Non-Analogous Prior Art Structures

In the Official Action, the Jackson patent is relied upon to disclose the structure of the present invention, the Aubrey patent teaches the "pumpless-ness" of the system, and the Kern patent discloses the venturi means. The Jackson patent is most clearly mis-applied to structures of the present invention. The disinfectant line is not disclosed by reference numeral 32 of the Jackson patent. Reference numeral 32 is only an inlet channel for mixing the biological fluid line and the water flow line. The Examiner in the Final Action of August 29, 2005 repeatedly refers to and relies upon "disinfectant line as channel 32", even though the Jackson patent has no analogous disinfectant line. The Examiner even notes that the disinfectant fluid flows through the exact same entry as the biological fluid, such that the Jackson patent discloses a single channel instead of two channels. The

single channel 32 of the Jackson patent does not disclose nor make obvious the biological fluid line 16 and the disinfectant line 18 of the present invention. The structures are clearly separate, and the claim language defines important structural inter-relationships between the two lines in order to allow the system to function, including type of connection and interaction with the water flow line. The combination of references does not disclose any disinfectant line structure and does not disclose the structural inter-relationships of the disinfectant line claims in present invention. Thus, the combination of prior art cannot make the present invention obvious.

Applicant acknowledges that inlet channel 32 of the Jackson patent has disinfectant fluid flowing therethrough (col. 5, ll. 56-61), but this disinfectant line still does not disclose the disinfectant line as claimed. The supply of disinfectant of the Jackson patent is clearly not controlled by the same disinfectant line element of the present invention. There are numerous significant differences. The Jackson patent teaches the disinfectant to be added through the waste inlet 23, without relation to the biological fluid flow. The mixture occurs outside of the housing. The disinfectant flow is not metered or powered by the biological fluid flow. The disinfectant is manually applied such that there is no passive control of application by any other fluid flow.

Furthermore, the Aubrey patent does not disclose a pumpless system as referenced in the Office Action. The cited excerpt of the Aubrey patent refers to a system without "reservoir tanks and replenisher pumps" (col. 8, ll. 5-6) is misleading. Again, the pumps in the Aubrey patent are mis-applied as mixing pumps. This last portion of the specification refers to the supply of chemicals to be provided and is not analogous to the mixing structures of the Aubrey patent. The Aubrey patent still relies on pump action to mix the fluids, including pump action caused by a controlled solenoid valve and water pressure. The disclosure of a lack of pumps to containers 50 and 58 of the present

invention do not disclose anything about the structures or lack of structures within the housing 12 of the present invention.

Applicant acknowledges that the Kern patent discloses a venturi effect. However, the Kern patent, and the combination of the Jackson, Aubrey and Kern patents does not disclose or make obvious the specific venturi effect produced by the present invention and particularly claimed in the independent claims. The pump 37 of the Jackson patent being replaced by a venturi effect simply discloses the already known prior art, which is outlet 22 in Figures 1 and 2 of the present invention. The independent claims 21, 29 and 33 now properly claim the structure with a connection point at outlet 76 of Figure 2 of the present invention. The unique venturi-related connections and structures of the present invention cannot be found in the prior art combination when the proper analogous structures are considered.

3. Corresponding Dependent Claims are also nonobvious

As such, the claims 22-25, 30-31 and 34, being dependent upon the independent claims, should also be non-obvious with respect to the prior art combination. With specific regard to the rejection of Claim 24, Applicant emphasizes the particular mis-application of the Jackson patent. It is most likely beyond reasonable interpretation to characterize the macerator 26 element of the Jackson patent as both the disinfectant line 32 and a water line 30. Claim 24 clearly describes separate structures and specific positional relationships that are simply not be made obvious by the single unrelated macerator 26 element of the Jackson patent. There is no suggestion of any of these positional mountings of the different lines and structures in the discussion of reference numeral 26 in combination with all other references.

B. THE PRIOR ART COMBINATION OF THE JACKSON PATENT, AUBREY PATENT, KERN PATENT AND GRIFFITHS PATENT DOES NOT DISCLOSE THE ELEMENTS OF THE INVENTION AS CLAIMED

With regard to the obviousness rejection of Claims 26-28, 32 and 35, Applicant respectfully contends that it is clear that only components of random prior art systems are joined together for the purposes of "making obvious" the teachings of claims.

Relative to the remaining obviousness rejections based upon the combination of the Jackson patent, Aubrey patent, Kern patent and the Griffiths patent, Applicant respectfully contends that Claims 26-28, 32 and 35 are not made obvious by this combination. The first Jackson, Aubrey and Kern combination does not disclose the elements nor even suggest the elements of the base independent claims, such that the addition of the Griffiths patent provides no further argument for making these dependent Claims 26-28, 32 and 35 obvious.

The Griffiths patent only adds the container elements, but this new combination still does not disclose or even suggest the structures of the base independent claims. The Jackson, Aubrey and Kern patent in combination with the Griffiths patent still do not make the base independent claims obvious. With specific regard to the rejection of Claim 27, the claim language has been amended to properly claim the pipe as the disinfectant line with the valveless connection point within the housing. These limitations on the container connections are not disclosed or suggested by the combination with the Griffiths patent because the Griffiths patent teaches pumps 108 to create the flow of disinfectant.

Furthermore, the Griffiths patent teaches against the limited pumpless of the Aubrey patent in the combination. The Griffiths patent describes a static mixing apparatus 76 for the purpose of mixing the biological fluid with the disinfectant. However, the biological fluid and the disinfectant

are maintained in a mixed condition within a reservoir in a "batch process" type of system. A variety of pumps are employed throughout the system of the Griffiths patent so as to assure the proper delivery and mixture of the components. Similarly, several valves are integrated into the system so as to direct the flow of fluids from one direction or another. Pumps are required to discharge the waste from the reservoir outwardly to the sewer system.

The prior art combination is a Frankenstein-like conglomeration of prior art with internal conflicts and inconsistencies. The combination does not coherently combine to clearly disclose an obvious invention. More importantly, the combination does not combine to disclose the present invention as now claimed by the Applicant.

III. THE INVENTION IS NOT MADE OBVIOUS BY THE PRIOR ART COMBINATIONS BECAUSE THE COMBINATIONS ARE NOT PROPER

In determining the propriety of the Patent Office's position as to obviousness in the first instance, it is first necessary to ascertain whether or not the referenced teachings would appear to be sufficient to one of ordinary skill in the relevant art knowing the reference before him to make the proposed substitution, combination, or other modification. In re Lintner, 458 F.2d 1013, 1016, 173 U.S.P.Q. 560 (C.C.P.A. 1972). A conclusion of obviousness may not be based on an impermissible hindsight reconstruction of the art. Application of Van Wanderhim, 378 F.2d 981 (C.C.P.A. 1967). It is insufficient to show merely that each separate element of a claimed invention can be found in one or various prior art references. Canadian Ingersoll-Rand Co. v. Peterson Products, Inc., 223 F.Supp. 803, 139 U.S.P.Q. 61 (N.D. Cal. 1963). There should be some teaching, or at least suggestion, in the prior art that the individual elements can, or should, be combined as claimed. In

re Regel, 526 F.2d 1399, 1403, 188 U.S.P.Q. 136 (C.C.P.A. 1975).

A. ONE SKILLED IN THE ART WOULD NOT COMBINE THE PRIOR ART JACKSON PATENT, AUBREY PATENT AND KERN PATENT

With general regard to the obviousness rejection of Claims 21-25, 29-31 and 33-34, Applicant respectfully contends that it is clear that only components of random prior art systems are joined together for the purposes of "making obvious" the teachings of claims. There would be no natural reason for combining the biological fluid disposal of the Jackson patent with the X-ray chemicals of the Aubrey patent and the semi-conductor chip aspirator of the Kern patent. Although related to fluid processing, the amounts, toxicity, volatility, function, and application of the mixed fluids in the three patents encounter widely different obstacles and considerations. These combinations are from entirely different applications in the field of art, such that one skilled in the art of fluid processing would not combine these references. Applicant respectfully notes that combining three disparate prior art patents actually tends to support a finding a nonobviousness.

1. Different purposes and functionality

The Jackson patent also teaches an apparatus for the treatment and disposal of infectious waste. The Jackson patent is quite distinguishable from the present invention in that the Jackson patent is a timed batch process. The Jackson device requires the use of a macerator for chopping the waste. Various assorted pumps are provide throughout the system so as to pump the waste into a container for holding in a batch. A variety of timers, pumps, and assorted controls are requires so as to assure that the disinfectant is contained within the waste for a desired period of time and in proper proportions.

The prior art Aubrey system is a very complicated mixing apparatus employing a variety of

pumps and valves. In particular, the purpose of the Aubrey patent is simply for the mixing of x-ray processing chemicals. The Aubrey system utilizes a series of valves for the purpose of controlling mixing and for regulating the mixtures. The mixture is regulated through the use of a variety of different flow meters. Constant monitoring of the liquid mixing apparatus of the Aubrey patent is required so as to assure that the proper mixture is obtained.

The Kern patent teaches a liquid mixing device for aspirating a mixed cleaning fluid on semiconductors. The Kern patent utilizes a modified venturi effect to control the volume of fluid at the connection point and at the outlet point. This prior art system has multiple parallel injection points relying upon a single venturi effect for regulation. Each of the parallel injection points are independently regulated and controlled, since different chemicals are being injected from each injection point. The amount of monitoring for individual volume and flow rate is high because of the tiny magnitude of fluids to be aspirated.

2. The combination should be re-considered

Fundamentally, one having ordinary skill in the art of biological fluid processing would not be inclined to look to the teachings of the Aubrey patent and the Kern patent in order to develop a self-regulated system with minimal mechanical and electrical devices by passive control. The features of the Jackson patent do not suggest a combination with the Aubrey patent and/or the Kern patent because of explicitly stated goals to regulate and to monitor the fluid mixtures, in terms of flow rates, mixing time and mixing proportions. The Jackson patent and the Aubrey patent both teach against the passive control by venturi effect in the Kern patent. There is no suggestion that the highly regulated chemicals in the Jackson patent and the Aubrey patent should be mixed without careful control of the mixing time, flow rates, and relative amounts of each chemical to be mixed

in the respective systems. The Examiner has cited the Aubrey patent as disclosing and suggesting a "pumpless" system, but this characterization is not accurate. The Aubrey patent does not disclose a pumpless system as referenced in the Office Action. The cited excerpt of the Aubrey patent refers to a system without "reservoir tanks and replenisher pumps" (col. 8, ll. 5-6). The Aubrey patent still relies on other pumps to dispense fluids, including a developer bath pump and a fixer bath pump (col. 2, ll. 12-16). There is no suggestion that the fluid pumps are eliminated. Only replenisher pumps are considered optional.

As such, the Applicant respectfully contends that there would be no reason to combine the Jackson patent with the disclosures of the Aubrey patent and/or Kern patent other than the purpose of attempting to reconstruct, from hindsight analysis, the biological fluid mixing system of the present invention. The Aubrey patent and the Kern patent are related by the general subject matter of fluid-mixing, but they should not be combined with the Jackson patent.

B. ONE SKILLED IN THE ART WOULD NOT COMBINE THE PRIOR ART JACKSON PATENT, AUBREY PATENT, KERN PATENT AND GRIFFITHS PATENT

With general regard to the obviousness rejection of Claims 26-28, 32 and 35, Applicant respectfully contends that adding a fourth patent to a combination only further supports a finding of nonobviousness. Similar to the arguments against the prior art patents of the previous combination, these now four patents still have very different purposes and functionalities. The fourth Griffiths patent describes a static mixing apparatus for the purpose of mixing the biological fluid with the disinfectant at highly controlled storage points and connection points. A variety of pumps are employed throughout the system of the Griffiths patent so as to assure the proper delivery and

mixture of the components, including valves to change flow directions. Again, the Griffiths patent does not suggest any system of self-regulation or reduction of fluid monitoring and control. The Examiner cites the Griffiths patent as adding container elements, but this new combination has still been made without addressing the more basic flaw of the three original prior art patents that do not disclose or even suggest the structures of the base independent claims. It is more clear that only components of four prior art systems are joined together for the purposes of "making obvious" the teachings of claims. The combination does not coherently combine to clearly disclose an obvious invention.

On this basis, Applicant respectfully contends that the present invention is patentably distinguishable from the prior art combination. Reconsideration of the rejections and allowance of the claims at an early date is earnestly solicited. Since no new claims have been added above those originally paid for, no additional fee is required.

IV. SUMMARY

Based upon the foregoing analysis, it is Applicants' contention that Claims 21-35 of the present invention are patentably distinguishable from the prior art combinations.

The foregoing Brief is intended to assist the Board of Appeals in examining the application and, in the course of explanation, may employ shortened or more specific or variant descriptions of some of the claim language. Such descriptions are not intended to limit the scope of the claims; the actual claim language should be considered in each case. Furthermore, the remarks are not considered to be exhaustive of the facets of the invention which render it patentable, being only examples of certain advantageous features and differences which Applicants' attorney chooses to

mention at this time.

Reconsideration of the application, as amended, and allowance hereof are respectfully requested.

Respectfully submitted,

4-28-06
Date

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CLAIMS APPENDIX

21. A biological fluid disposal system comprising:

a housing;

a water flow line having an inlet and an outlet extending outwardly of said housing;

a biological fluid line in fluid communication with said water flow line, said biological fluid line having an inlet positioned outwardly of said housing; and

a disinfectant line in fluid communication with said water flow line, said disinfectant line being in valveless fluid communication at a connection point with said biological fluid line within said housing, said disinfectant line having an inlet extending outwardly of said housing, said biological fluid line and said disinfectant line being connected to said water flow line such that solely a flow of water through said water flow line causes a suction action through said biological fluid line and said disinfectant line to draw a biological fluid line through said biological fluid line and draw a disinfectant through said disinfectant line so as to mix the disinfectant with the biological fluid prior to passing into said water flow line, said housing having no pumps therein, the suction action through said disinfectant line being dependent upon flow of said biological fluid.

22. The system of Claim 21, said water flow line having an inlet means and an outlet means, said inlet means for passing a water flow through said water flow line, said outlet means for releasing a mixture of the biological fluid and the water and the disinfectant from said water flow line.

23. The system of Claim 21, further comprising:

a water inlet communicating with one end of said water flow line; and

an outlet means connected to said water flow line on an opposite end of said water flow line, said outlet means for passing a flow of liquid from said water flow line to a sewer.

24. The system of Claim 21, said biological fluid line comprising:

a pipe communicating with said water flow line and having a connection to said disinfectant line at a distance from said water flow line and between an inlet of said pipe and said water flow line, the biological fluid mixing with the disinfectant in said pipe.

25. The system of Claim 24, further comprising:

a valve means connected to said pipe between said inlet of said pipe and said connection to said disinfectant line, said valve means for limiting a rate of biological fluid flow through said biological fluid line.

26. The system of Claim 21, further comprising:

a biological fluid container having a supply of biological fluid therein, said supply of biological fluid having a top level within said biological fluid container, said inlet of said biological fluid line removably extending so as to have said inlet positioned below said top level, said supply of biological fluid being substantially blood.

27. The system of Claim 21, said disinfectant line comprising:

a pipe in valveless communication with said biological fluid line at a connection point within said housing, said inlet of said disinfectant line extending outwardly of said pipe, said inlet of said disinfectant line suitable for insertion into a disinfectant container.

28. The system of Claim 27, the disinfectant container having a supply of disinfectant therein, said supply of disinfectant having a top level within the disinfectant container, said inlet of said disinfectant line removably extending below said top level.

29. A biological fluid disposal system comprising:

a water flow line;

a biological fluid line in fluid communication with said water flow line;

a disinfectant line having a valveless connection at a connection point to said biological fluid line, said disinfectant line being in fluid communication with said biological fluid line between said water flow line and an inlet of said biological fluid line;

a venturi means connected to said water flow line for creating a suction force so as to draw a biological fluid through said biological fluid line and to draw a disinfectant through said disinfectant line so as to mix intimately together in said biological fluid line prior to passing as a mixture into said water flow line, the biological fluid line being substantially blood.

30. The system of Claim 29, said venturi means comprising:

a source of water pressure connected to said water flow line such that solely a water flow across an opening of at least one of said biological fluid line and said disinfectant line creates said suction force.

31. The system of Claim 29, further comprising:

a sewer interconnected to an outlet of said water flow line.

32. The system of Claim 29, further comprising:

a biological fluid container having a supply of the biological fluid therein, said supply of the biological fluid having a top level within said biological fluid container, said biological fluid line having an inlet below said top level; and

a disinfectant container having a supply of the disinfectant therein, said supply of the disinfectant having a top level within said disinfectant container, said disinfectant line having an inlet below said top level of said supply of the disinfectant.

33. A method of disposing of a biological fluid comprising:

connecting a biological fluid line in valveless relation to a disinfectant line at a connection point such that one of said biological fluid line and said disinfectant line opens into the other of said biological fluid line and said disinfectant line;

connecting a water flow line to an outlet of the other of said biological fluid line and said disinfectant line;

passing water through said water flow line across said outlet so as to cause a venturi effect to solely draw a biological fluid and a disinfectant through the respective biological fluid line and disinfectant line, the biological fluid line being substantially blood, wherein flow of said biological fluid through the biological fluid line coincides in time with flow of said disinfectant through the disinfectant line;

mixing the biological fluid and the disinfectant in the other of said biological fluid line and said disinfectant line; and

discharging the water and the mixed biological fluid and disinfectant from said water flow line.

34. The method of Claim 33, said step of connecting said biological fluid line to said disinfectant line comprising:

connecting said disinfectant line to said biological fluid line between an inlet of said biological fluid line and said outlet.

35. The method of Claim 33, further comprising:

inserting an inlet of said biological fluid line into a container of the biological fluid; and

inserting an inlet of said disinfectant line into a container of the disinfectant.

EVIDENCE APPENDIX

Not Applicable.

RELATED PROCEEDINGS APPENDIX

Not Applicable.